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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/552,821
Filing Date: October 06, 2005
Appellant(s): SCHNEIDER ET AL.

Andrew Wilford
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/28/2009 appealing from the Office action
mailed 03/10/2009

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

7,207,716	BUCHANAN et al.	04-2007
JP 3-29753	NAGAOKA	02-1991

A copy of the translated Nagaoka reference has been cited on an attached PTO-892.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 5, 7, 10, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,207,716 to Buchanan et al. and Japanese Document No. 3-29753 to Nagaoka.

Buchanan et al. discloses a pair of thermoplastic side panels (22, 24, 26, 28) having welded together side (29, 31) and bottom (20), top edges defining a fill opening, inner faces turned toward each other, and outer faces turned away from each other; a closure (210) having a pair of interfitable profile strips welded to the inner faces of the side panels at the top edges (110, 112) via the upper panel portion (14). See Fig. 8. The closure includes a slider (212) shiftable across the profile strips to fit together and separate the strips. Buchanan et al. further discloses a pair of thermoplastic handles

(16, 18) welded to the top edges (110, 112) of a respective one of side panels (24, 28) so as to normally extend downward away from the top edge (110, 112) and lie substantially flat against the respective outer face (see Fig. 3), the handles being foldable upward such that they lie above the top edges (110, 112) in alignment with each other (see Fig. 4). However, Buchanan et al. shows U-shaped handles instead of handle patches each formed with a hand hole. Nagaoka shows that handle patches each formed with a hand hole are equivalent structures known in the art. Therefore, because these two handle means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute handle patches each formed with a hand hole for U-shaped handles.

Furthermore, Buchanan et al. and Nagaoka disclose the claimed invention, as discussed above, except for the handles being welded to the outer face of the side panels. It would have been obvious to one having ordinary skill in the art at the time the invention was made to weld the handles of the modified Buchanan et al. bag to the outer surface of the side panels, since it has been held that rearranging parts of an invention involves only routine skill in the art.

Regarding claim 5, Buchanan et al. and Nagaoka disclose the claimed invention except for side panels being made of an insulating foil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an insulating foil for the side panels of the modified Buchanan et al. bag, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 10, Buchanan et al. shows the handles located at a lower level than the closure, thus meeting the recitation the handles “are welded on directly below the closure”.

Regarding claim 11, Buchanan et al. and Nagaoka meet the recitation “the handle patches are welded on together with the closure” to the degree that Buchanan et al. discloses thermally sealing the handles to the upper panel portion, which carries the closure.

(10) Response to Argument

Appellant argues that the neither Buchanan et al. nor Nagaoka disclose patches “each welded at a respective one of the top edges to the outer face of a respective one of the side panels” and handles that lie against the outer faces and extend downward. As discussed in the Final Office action, Buchanan et al. discloses a pair of thermoplastic handles (16, 18) welded to the top edges (110, 112) of a respective one of side panels (24, 28) so as to normally extend downward away from the top edge (110, 112) and lie substantially flat against the respective outer face (see Fig. 3). Furthermore, the handles (16, 18) are foldable upward such that they lie above the top edges (110, 112) in alignment with each other (see Fig. 4). Therefore, the portion of the recitation that requires handles each welded at a respective one of the top edges of a respective one of the side panels so as to normally extend downward away from the top edge and lie flatly against the respective outer face and being foldable upward such the handles lie above the top edges in alignment with each other is met by Buchanan et al.

Appellant further argues that Nagaoka does not show or suggest handle patches welded at a respective one of the top edge to the outer face and extending downward away from the top edge. It is noted that Buchanan et al. already discloses handles welded at a respective one of the top edges and extending downward away from the top edge. Nagaoka is cited as showing that handle patches each formed with a hand hole and U-shaped handles, similar to those shown in Buchanan et al., are equivalent structures known in the art of bags. As discussed in the Final Office action, these two handle means were art-recognized equivalents at the time the invention was made, and therefore, one of ordinary skill in the art would have found it obvious to substitute handle patches each formed with a hand hole for U-shaped handles. Moreover, in response to appellant's argument that there is no suggestion in the Nagaoka reference to weld the handles patches extending downward away from the top edge, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In this case, Buchanan et al. suggests handles that are welded to the top edges of a bag extending downward away from the top edge and Nagaoka suggests handles patches and U-shaped handles are equivalents in bags.

Regarding appellant's argument that neither Buchanan et al. nor Nagaoka discloses welding handle patches to the outer face of a respective one of the side panels, the Final Office action states that it would have been obvious to one having

ordinary skill in the art at the time the invention was made to weld the handles of the modified Buchanan et al. bag to the outer surface of the side panels, since it has been held that rearranging parts of an invention involves only routine skill in the art. Appellant's brief fails to set forth any evidence why a rearrangement of parts would not involve routine skill in the art. Welding the handles of the modified Buchanan et al. bag to the outer face of a respective one of the side panels is neither explicitly precluded by Buchanan et al. nor would it render Buchanan et al. inoperative.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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